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No. 05-1240

In the Supreme Court of the United States

ANDRE WALLACE, PETITIONER,

v.

CHICAGO POLICE OFFICERS
KRISTEN KATO AND EUGENE ROY, RESPONDENTS.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR THE STATES OF ILLINOIS, ALABAMA, DELAWARE, IOWA, MONTANA, NORTH DAKOTA, OKLAHOMA, SOUTH CAROLINA, UTAH, WASHINGTON AND WISCONSIN, AND THE DISTRICT OF COLUMBIA, AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

LISA MADIGAN
Attorney General of Illinois
GARY FEINERMAN*
Solicitor General
MICHAEL SCODRO
Deputy Solicitor General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-3698

*Counsel of Record

[additional counsel listed on signature page]

QUESTION PRESENTED

When does a claim for damages arising out of a false arrest or other search or seizure forbidden by the Fourth Amendment accrue when the fruits of the search were introduced in the claimant's criminal trial and he was convicted?

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INTEREST OF THE *AMICI CURIAE*

This case presents the question whether a civil damages claim arising from an alleged Fourth Amendment violation accrues (i) when the challenged search or seizure occurs, as the Seventh Circuit held and respondent City of Chicago urges, or (ii) on a date that depends upon the particular facts of each case, as petitioner Andre Wallace maintains.

Amici States have a strong interest in the resolution of this question. Although this case involves a municipality, state employees and officers frequently are named as defendants in suits brought under 42 U.S.C. § 1983 alleging Fourth Amendment violations. See, *e.g.*, *Green v. Butler*, 420 F.3d 689 (7th Cir. 2005); *Russell v. Harms*, 397 F.3d 458 (7th Cir. 2005). The Seventh Circuit's bright-line rule, aside from protecting the States from additional rounds of litigation in § 1983 suits, provides certainty and predictability, which benefits civil plaintiffs and state defendants alike. Starting the limitations clock with the challenged search or seizure, moreover, promotes the important state interest in seasonal notice of alleged wrongdoing by state actors, and permits the States to preserve evidence relevant to future civil claims.

STATEMENT

The history of this case well illustrates the advantages of the Seventh Circuit's bright-line rule and the uncertainty and potential for abuse inherent in petitioner's alternative.

1. John Handy was shot and killed on January 17, 1994. Chicago police officers investigating the murder brought petitioner Andre Wallace to the police station for questioning two days later. Early the next morning, after confronting Wallace with statements by witnesses who claimed they saw him running from the crime scene after hearing gun shots, Wallace confessed. Pet. App. 2-3.

2. Prior to trial, Wallace moved to suppress his confession on two grounds, claiming that officers (i) arrested him without probable cause and (ii) obtained his confession unlawfully. The trial court denied the motions and, following a bench trial, found Wallace guilty of first degree murder. Pet. App. 3-4.

Wallace appealed, and on September 21, 1998, the Appellate Court of Illinois held that he had been unlawfully arrested and remanded for a hearing on whether his confession was sufficiently attenuated from the unlawful arrest to be admissible. J.A. 6-23. On remand, the trial court held that there was sufficient attenuation and therefore that the confession was admissible. Wallace again appealed, and the appellate court reversed, ruling that his confession should have been suppressed and remanding for a new trial. J.A. 24-35. The State declined to reprosecute, and filed a *nolle prosequi* motion on April 10, 2002. Pet. App. 4.

3. On April 2, 2003, Wallace filed this federal lawsuit under 42 U.S.C. § 1983 against the City of Chicago and two Chicago police officers, respondents Kristen Kato and Eugene Roy, seeking damages for, among other things, alleged violations of his Fourth Amendment rights. Pet. App. 4. In two separate opinions, the district court held that Wallace's claims were time-barred. Pet. App. 30-52.

With respect to the Fourth Amendment claims, Wallace relied upon the Seventh Circuit's then-recent decision in *Gauger v. Hendle*, 349 F.3d 354 (7th Cir. 2003). Pet. App. 50. Based upon its reading of *Heck v. Humphrey*, 512 U.S. 477 (1994), *Gauger* held "that when a constitutional claim under Section 1983 for false arrest would, if vindicated, undermine a state conviction, the statute of limitations is not tolled until the charges against the defendant are dropped." Pet. App. 50-51 (citing *Gauger*, 349 F.3d at 360-361). The district court concluded *Gauger* did not help Wallace because, even if his

Fourth Amendment claims did not accrue at the time of his arrest, they accrued no later than September 21, 1998—more than four years before he filed his § 1983 suit—when the state appellate court held his arrest unlawful but remanded for a finding on attenuation, implying that Wallace's false arrest claim did not necessarily undermine his conviction. Pet. App. 51-52.

4. The Seventh Circuit affirmed. Noting that *Heck* "held that a constitutional claim [for damages] that would undermine a criminal conviction if vindicated cannot be brought until the defendant's conviction is nullified," the court observed that the circuits had divided over whether a false arrest claim could ever be said to undermine a conviction within the meaning of *Heck*. Pet. App. 8, 15. The Seventh Circuit concluded, disapproving its prior decision in *Gauger*, that because a successful civil claim for false arrest does not necessarily undermine a civil plaintiff's underlying conviction the best course was to impose a bright-line rule that false arrest claims accrue when the challenged seizure occurs, not if and when the resulting conviction is overturned. Pet. App. 12-13.

According to the Seventh Circuit, *Heck* made clear that Fourth Amendment claims for "an unlawful search or arrest may be brought immediately, because a violation of the [F]ourth [A]mendment does not necessarily impugn the validity of a conviction." Pet. App. 9 (internal quotations omitted). And the court found that Wallace's case-by-case approach would be impractical because it would require federal § 1983 courts to predict whether, on the facts of a particular case, a successful Fourth Amendment challenge would necessarily invalidate the claimant's conviction:

> *ex ante* it is not readily apparent which criminal cases might proceed despite the consequences of the successful Fourth Amendment challenge. This, in our

> view, argues against a rule that requires judges several years after the event to decide whether a particular Fourth Amendment challenge would have been the death knell of the prosecution.

Pet. App. 12.

5. Wallace filed a certiorari petition seeking review of two questions: (i) when does a claim for damages under the Fourth Amendment or for an allegedly coerced confession under the Fifth Amendment accrue where the civil plaintiff has been convicted using the fruits of the alleged misconduct; and (ii) are damages available under § 1983 for an allegedly "unlawful seizure that began at the time of arrest and continued to the time that charges were dismissed." Pet. i. The Court granted the petition, limited to the first question, reformulated as follows: "When does a claim for damages arising out of a false arrest or other search or seizure forbidden by the Fourth Amendment accrue when the fruits of the search were introduced in the claimant's criminal trial and he was convicted?"

SUMMARY OF ARGUMENT

Heck v. Humphrey, 512 U.S. 477 (1994), prevents civil plaintiffs from using § 1983 suits to challenge their criminal convictions collaterally, without satisfying the exhaustion and other requirements for federal habeas relief. *Heck* does so by requiring civil plaintiffs, as an element of their civil causes of action, to prove that their underlying criminal proceedings terminated in their favor. The Court was careful to limit this "favorable termination" requirement to circumstances where success in the plaintiff's civil suit would "necessarily imply" the invalidity of any criminal conviction. *Id.* at 487.

The Seventh Circuit correctly applied *Heck* in holding that a § 1983 claim for false arrest or other unlawful search or seizure accrues precisely when the challenged search or seizure

occurs. The rule in *Heck* postpones accrual of a § 1983 claim only if the plaintiff's success on that claim cannot coexist with a valid criminal conviction or sentence. This rule is derived from the common law of tort, which makes the plaintiff's success in his underlying criminal action an element of a malicious prosecution claim (like the one advanced in *Heck*), but not of Fourth Amendment tort analogues like false arrest and trespass. *Heck* and its progeny foreclose Wallace's case-by-case approach to claim accrual, under which the accrual date depends not on the claim's formal legal elements and compatibility with a valid conviction and sentence, but on the particular facts of the underlying criminal case and a determination whether civil claims could coexist with a lawful conviction on those specific facts.

Wallace's approach not only is unsound doctrinally, but also runs counter to *Heck*'s express purpose and produces untenable practical consequences. *Heck* aimed to protect habeas as the sole federal vehicle for attacking a state conviction or sentence. But a state criminal court's decision to admit evidence procured in violation of the Fourth Amendment is not grounds for federal habeas relief, see *Stone v. Powell*, 428 U.S. 465 (1976), so with respect to Fourth Amendment claims there is no federal habeas vehicle to protect. Ironically, Wallace reads *Heck* to *require* federal § 1983 courts to decide issues that state courts have yet to decide, merely to determine whether *Heck*'s "favorable termination" requirement even applies. Moreover, resolving the intensely fact-specific issues that would face district courts at the outset of § 1983 cases would make it nearly impossible for defendants to prevail on a statute of limitations defense in many (if not most) such cases on motions to dismiss or for summary judgment.

Beyond this, there is a basic unfairness in Wallace's proposal. Governments have a powerful interest in timely notice of alleged misconduct by their agents, either to discipline

offenders within their ranks or to preserve evidence needed to defend the wrongly accused. Wallace's approach, which would postpone the filing of some § 1983 claims until many years after the alleged misconduct, runs directly counter to this interest. At the same time, civil plaintiffs would run the risk that their counsel would forfeit legitimate claims by erroneously predicting that the § 1983 court, at some point in the future, would select a later accrual date.

Amici States respectfully submit that the Seventh Circuit correctly concluded that it would be most consistent with the letter and spirit of *Heck* to hold that claims for damages for alleged Fourth Amendment violations accrue at the time of the challenged search or seizure.

ARGUMENT

Wallace's challenge to the Seventh Circuit's categorical, bright-line rule fails on multiple grounds. The alternative he urges—under which claim accrual depends upon the particular facts of each case—cannot be squared with *Heck v. Humphrey*, 512 U.S. 477 (1994). By contrast, the Seventh Circuit's rule reflects *Heck*'s concern with intrinsic, doctrinal incompatibilities between successful civil claims and outstanding criminal convictions, and comports with *Heck*'s interest in preserving the ability of state courts to resolve challenges to state criminal proceedings in the first instance. In addition, Wallace's approach would have untoward consequences. Unlike the Seventh Circuit's clear and predictable rule, Wallace's alternative would delay the filing of suits alleging official misconduct and would likely trip up plaintiffs' counsel trying in good faith to file timely complaints. The case-by-case approach also would require an additional layer of fact-intensive litigation in many § 1983 suits.

I. Wallace's Case-By-Case Approach Cannot Be Squared With The Rule Of *Heck* Or Its Rationale.

This case turns in large part on the proper understanding of *Heck*. *Heck* made clear that its "favorable termination" rule—requiring § 1983 plaintiffs to prove that their criminal proceedings ultimately terminated in their favor as an element of their civil claims—does not apply merely when there is some overlap between the civil and criminal cases. Rather, the rule applies only where there is an actual inconsistency between a successful civil claim and a valid conviction. Wallace's alternative ignores this requirement and cannot be reconciled with *Heck*'s underlying objectives.

A. The Rule In *Heck* Turns On Whether A Successful Claim For Damages Can Coexist Doctrinally With A Lawful Criminal Conviction.

Roy Heck's § 1983 suit effectively challenged the "legality of his [state court] conviction" for voluntary manslaughter. *Heck*, 512 U.S. at 478-480. Had Heck sought directly to overturn his actual conviction or sentence, his suit would have fallen squarely within the prohibition of *Preiser v. Rodriquez*, 411 U.S. 475 (1973), and his only federal remedy would have been habeas relief. *Heck*, 512 U.S. at 481; see also *Hill v. McDonough*, 126 S. Ct. 2096, 2101 (2006); *Nelson v. Campbell*, 541 U.S. 637, 643 (2004). But Heck sought only damages. The problem was that he sought damages on a theory that, if vindicated, would necessarily have meant that his conviction was unlawful. *Heck*, 512 U.S. at 480.

This Court concluded that in suits like Heck's—where victory for the plaintiff "would necessarily imply the invalidity of his conviction or sentence"—the civil "complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has been invalidated." *Id.* at 487. In reaching its conclusion, the Court "look[ed] first to the common

law of torts," specifically at "[t]he common-law cause of action for malicious prosecution." *Id.* at 484. Malicious prosecution "provide[d] the closest analogy" to Heck's constitutional challenge because, like Heck's claim, it "permits damages for confinement imposed pursuant to legal process." *Ibid.* And among the elements "that must be alleged and proved in a malicious prosecution action is termination in the prior criminal proceeding in favor of the accused." *Ibid.*; see also *Wilson v. Garcia*, 471 U.S. 261, 277 (1985) ("we have found tort analogies compelling in establishing the elements of a cause of action under § 1983"). The common law required proof of this element to avoid "parallel [civil and criminal] litigation," and this Court found the same policy implicated by civil claims, like Heck's, "that necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement." *Heck*, 512 U.S. at 485.

The Court held that *Heck*'s "favorable termination" requirement would apply not only to suits for "damages for allegedly unconstitutional conviction or imprisonment," but also to claims "for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid." *Id.* at 486. The lone example the Court provided of such an "other harm" was a Fourth Amendment false arrest suit where the underlying conviction was for resisting arrest, an offense that has as one of its elements the legality of the arrest. *Id.* at 487 n.6. For a civil plaintiff to prevail in such a case, "he would have to negate an element of the offense of which he has been convicted." *Ibid.* Thus, it would be impossible for both the plaintiff in the civil case and the prosecution in the criminal case to prevail without violating the "strong judicial policy against the creation of two conflicting resolutions" of the same issue. *Id.* at 484 (internal quotations omitted). *Heck* advances that judicial policy by "specif[ying] that a prisoner cannot use § 1983 to obtain damages where success *would necessarily* imply the unlawfulness of a (not previously invalidated)

conviction or sentence." *Wilkinson v. Dotson*, 544 U.S. 74, 81 (2005) (emphasis in original).

By it very nature, a Fourth Amendment § 1983 claim does not share elements with a criminal offense (with the exception of the crime of resisting arrest). Accordingly, a successful damages suit for an unlawful search or seizure does not "require the plaintiff to prove the unlawfulness of his conviction or confinement." *Heck*, 512 U.S. at 485. This proposition led this Court to expressly distinguish claims like Heck's, which resemble common law claims for malicious prosecution, from Fourth Amendment claims. The Court noted that the common law treats malicious prosecution and false arrest claims very differently, compensating victims of the former for any resulting conviction and incarceration, but limiting the latter to harm caused by the arrest itself, without regard to any ensuing prosecution. See *id.* at 484 (while "a successful malicious prosecution plaintiff may recover, in addition to general damages, compensation for any arrest or imprisonment, including damages for discomfort or injury to his health, or loss of time and deprivation of the society," damages for the tort of false arrest only "cover the time of detention up until issuance of process or arraignment, but not more") (internal quotations omitted). And the Court explained that claims for unlawful searches, unlike Heck's claim, are not intrinsically inconsistent with a valid conviction:

> [A] suit for damages attributable to an allegedly unreasonable search may lie even if the challenged search produced evidence that was introduced in a state criminal trial resulting in the § 1983 plaintiff's still-outstanding conviction. Because of doctrines like independent source and inevitable discovery, and especially harmless error, such a § 1983 action, even if successful, would not necessarily imply that the plaintiff's conviction was unlawful.

Id. at 487 n.7.

Wallace's case hinges on the fact that footnote seven did not go even further and say that *every* Fourth Amendment claim falls outside of *Heck*'s "favorable termination" rule. But, as the Seventh Circuit observed, the facts in *Heck* did not require the Court to make such a categorical statement. Pet. App. 12 ("Although the Court refrained from holding that all Fourth Amendment claims accrue immediately, it had no need to reach that issue in *Heck*."). The crux of the footnote is that any effort to undo a conviction on Fourth Amendment grounds will require more than the bare showing that police made an unlawful search or seizure. Several doctrines will insulate convictions from reversal—the independent source doctrine, the inevitable discovery rule, the harmless error doctrine, or attenuation between a confession and a false arrest. Consequently, any effort to recover damages for an unlawful search or seizure will not "necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement." *Heck*, 512 U.S. at 485. As the Court recently explained, "we acknowledged [in *Heck*] that an inmate could bring a challenge to the lawfulness of a search pursuant to § 1983 in the first instance, even if the search revealed evidence used to convict the inmate at trial, because success on the merits would not '*necessarily* imply that the plaintiff's conviction was unlawful.'" *Nelson*, 541 U.S. at 647 (quoting *Heck*, 512 U.S. at 487 n.7) (emphasis in original).

The disconnect between a Fourth Amendment violation and a wrongful conviction deepened even further last Term as a result of *Hudson v. Michigan*, 126 S. Ct. 2159 (2006), where this Court held that exclusion is not the remedy for every Fourth Amendment violation, even where that evidence "would not have come to light but for the illegal actions of the police." *Id.* at 2164 (internal quotations omitted). Evidence obtained illegally may still be admissible, so long as "the interest

protected by the constitutional guarantee that has been violated would not be served by suppression" or exclusion's "deterrence benefits outweigh its substantial social costs." *Id.* at 2164, 2165 (internal quotations omitted). This further uncoupled Fourth Amendment claims from the validity of the conviction. And *Hudson* emphasized that § 1983 actions may be brought to seek recompense for Fourth Amendment violations even where the violation did not result in the exclusion of evidence at trial. *Id.* at 2166-2168.

In short, *Heck* limits its "favorable termination" requirement to civil claims that, by definition, cannot succeed without necessarily undermining a criminal conviction and sentence. With the narrow exception identified in *Heck* for the crime of resisting arrest, Fourth Amendment claims do not meet this standard.

B. Wallace's Damages Theory Does Not Affect The Accrual Date.

In urging that his Fourth Amendment claim did not accrue until his release from prison, Wallace relies heavily on the fact that he seeks damages for his incarceration. He emphasizes that his imprisonment "was the natural consequence of respondents' actions" (Pet. Br. 8), that his claim is "for the injury of being convicted and imprisoned" (*id.* 10), that the Seventh Circuit erred by failing to recognize the availability of damages for his conviction and incarceration (*id.* 13-14), and that he did not have a cause of action for these damages until the Illinois courts overturned his conviction (*id.* 30). Given these premises, Wallace contends that his claim did not accrue until his release because he sought compensation for the entire period of his incarceration.

The Seventh Circuit held, correctly, that Wallace is not entitled to use a Fourth Amendment challenge to seek damages for his time in prison. Pet. App. 7 ("When a person's Fourth

Amendment rights have been violated by a false arrest, the injury occurs at the time of the arrest. Thus, an individual is entitled to recover only for injuries suffered from the time of arrest until his arraignment."). And more to the point, the Court did not grant Wallace's petition for certiorari on this issue. See page 4, *supra*; Sup. Ct. R. 24.1(a) (petitioner's brief "may not raise additional questions"). In any event, Wallace's attempt to use his damages theory to defer the accrual of his claims promotes gamesmanship, misreads *Heck*, and confuses claim accrual with tolling.

First, relying on the plaintiff's damages theory to determine the accrual date of a claim would promote gamesmanship and artful pleading. By alleging injury from the illegal search or seizure itself, a § 1983 plaintiff could avoid *Heck* and advance a claim regardless of the status of his criminal case. Conversely, a plaintiff who succeeds in overturning his conviction years after the challenged search or seizure (and who might have filed a Fourth Amendment claim earlier but did not) could avoid the time bar by alleging damages for the period of his incarceration, as Wallace did here. Such a regime would be unprincipled and ad hoc, tying the accrual date to the nature of the injury alleged by each individual plaintiff.

Second, Wallace's argument misreads *Heck*. Wallace focuses on the last sentence of footnote seven, which states that "the § 1983 plaintiff must prove not only that the search was unlawful, but that it caused him actual, compensable injury . . . *which . . . does not encompass the 'injury' of being convicted and imprisoned (until his conviction has been overturned).*" 512 U.S. at 487 n.7 (emphasis added); see Pet. Br. 30. But this passage does not leave it to the plaintiff to decide whether to avoid the "favorable termination" requirement and seek immediate accrual (by alleging damages only for the search or seizure) or to defer accrual (by alleging damages for his conviction and incarceration). The passage merely bars a

plaintiff from seeking damages arising from his conviction or incarceration unless and until he first mounts a successful challenge to that conviction or incarceration. See, *e.g.*, *Braxton v. Scott*, 905 F. Supp. 455, 458-459 (N.D. Ohio 1995) (sustaining illegal arrest claim because plaintiff "allege[d] compensable injuries independent of his conviction and imprisonment," but dismissing illegal search claim because plaintiff "allege[d] no compensable injury from the search except that the evidence was used in his federal trial").

This bar has no application in a Fourth Amendment case. As the Seventh Circuit explained years ago, "some injury from a violation of the fourth amendment is unrelated to conviction," and a civil claim accrues when that injury occurs:

> Suppose the police search a house without probable cause, find cocaine, and throw it away, convicting the defendant on evidence in their possession before the search? Or suppose they search without probable cause, find evidence, and use it at trial on an inevitable discovery or good-faith theory? The court admits the evidence after finding that the exclusionary rule is not appropriately invoked, and the conviction is proper; . . . this does not mean that damages are unavailable for the invasion of privacy, the broken door, and so on.

Gonzalez v. Entress, 133 F.3d 551, 554 (7th Cir. 1998). "All *Heck* does is knock out one element of damages, the injury from the wrongful conviction, while the conviction stands." *Ibid.*; see also *Beck v. City of Muskogee Police Dep't*, 195 F.3d 553, 558 n.3 (10th Cir. 1999) ("We read the [*Heck*] Court's latter statement [at the end of footnote seven] as only limiting the damages a plaintiff may recover in such a case—the damages cannot include those for being convicted and imprisoned, at least not until the conviction has been overturned.").

Third, Wallace's argument confuses accrual with tolling. If a party does obtain more time to file suit because his damages continued to mount after some initial injury, this is the result of state tolling doctrines, not the federal accrual rule. Section 1983 borrows state limitations laws wholesale, including state tolling provisions. See *Wilson*, 471 U.S. at 269; *Board of Regents, University of State of New York v. Tomanio*, 446 U.S. 478, 484 (1980). This is the result of "a congressional decision to defer to the State's judgment on the proper balance between the policies of repose and the substantive policies of enforcement embodied in the state cause of action." *Hardin v. Straub*, 490 U.S. 536, 538 (1989) (internal quotations omitted). Each State must make its own "value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones," including "tolling, revival, and questions of application." *Tomanio*, 446 U.S. at 485-486 (internal quotations omitted). "Courts . . . should not unravel state limitations rules unless their full application would defeat the goals of the federal statute at issue." *Hardin*, 490 U.S. at 539.

States have reached different decisions on the proper tolling rule in cases where damages aggregate over time. See *Gonzalez*, 133 F.3d at 554 (unlike Illinois, "[m]any states treat the time as tolled when the immediate injury is small in relation to the deferred injury and would not lead a reasonable person to file suit unless the greater loss comes to pass"). As the Seventh Circuit concluded below, these tolling doctrines—not a federal accrual standard—are the proper source for any rule deferring claim accrual as damages mount over time. Pet. App. 13 ("we are addressing only the question of accrual; other doctrines, such as equitable tolling, may also affect the time in which a particular suit may be brought").

C. Fourth Amendment Claims Do Not Implicate *Heck*'s Goal Of Avoiding An End Run Around Federal Habeas.

The Court emphasized in *Heck* that its decision lay "at the intersection of . . . the Civil Rights Act of 1871 and the federal habeas corpus statute." 512 U.S. at 480 (citations omitted); see also *id.* at 498 (Souter, J., concurring) (emphasizing need to "avoid collisions at the intersection of habeas and § 1983"). *Heck* and its progeny are thus concerned chiefly with cases falling within "the core of habeas corpus." *Dotson*, 544 U.S. at 79, 82 (internal quotations omitted). *Heck*'s "favorable termination" rule stops inmates from using § 1983 to attack their state convictions and sentences collaterally, without first exhausting their state court remedies as they must to seek federal habeas relief. See *Heck*, 512 U.S. at 480-481.

Federal habeas relief is not available to challenge the admission in criminal proceedings of evidence allegedly obtained in violation of the Fourth Amendment. See *Stone v. Powell*, 428 U.S. 465, 482 (1976). It necessarily follows that, with respect to Fourth Amendment claims, there is no risk of § 1983 serving a role reserved for federal habeas.

Ironically, Wallace's approach might actually allow federal civil suits to interfere with state criminal proceedings, for it would require § 1983 courts to decide, at the outset, whether *Heck*'s "favorable termination" rule applies in each case. This would entail determining what effect (if any) a successful Fourth Amendment challenge would have on the civil plaintiff's criminal trial, which often would require the § 1983 court to answer questions—*e.g.*, whether any error in admitting illegally obtained evidence was harmless, or whether authorities would have discovered the evidence by other means—that may be central to ongoing state proceedings.

II. Wallace's Approach to Accrual Is Unworkable.

Wallace's case-by-case approach, aside from running afoul of the letter and spirit of *Heck*, would negatively impact the administration of justice. First, requiring a fact-specific inquiry into claim accrual for each Fourth Amendment claim would defeat the certainty and predictability that this Court has endeavored to provide in the accrual and limitations context. Second, a case-by-case approach to accrual would require a new layer of fact-intensive litigation before § 1983 courts could address the merits of the plaintiff's civil claims.

A. Time Bars Should Be Certain And Predictable.

The principle that "[r]ules should be as simple and predictable as possible," *Morgan v. South Bend Community Sch. Corp.*, 797 F.2d 471, 477 (7th Cir. 1986), has particular force when it comes to statutes of limitations. Would-be plaintiffs and defendants need to know with certainty when potential claims can be filed and when the window for filing has closed, and clear, predictable rules avoid wasteful "byplay about limitations and allow[] the parties and the courts to concentrate their energies on the merits." *Herman v. City of Chicago*, 870 F.2d 400, 402 (7th Cir. 1989).

This Court has articulated bright-line rules for determining the proper limitations period in § 1983 cases precisely because less clear-cut alternatives lacked certainty and predictability. Until 1985, the statute of limitations in § 1983 cases was the limitations period assigned by state law to the most closely analogous claim. See *Owens v. Okure*, 488 U.S. 235, 239-240 (1989). This was a haphazard and unpredictable standard that forced parties to guess which limitations period a court would later decide to use. *Id.* at 240; *Wilson*, 471 U.S. at 272 ("The experience of the courts that have predicated their choice of correct statute of limitations on an analysis of the particular facts of each claim demonstrates that their approach inevitably

breeds uncertainty and time-consuming litigation."). "[P]laintiffs and defendants often had no idea whether a federal civil rights claim was barred until a court ruled on their case," *Wilson*, 471 U.S. at 272, and resources were diverted to "unproductive and ever-increasing litigation" unrelated to the merits. *Id.* at 275 & n.34.

Two decisions, *Wilson v. Garcia*, *supra*, and *Owens v. Okure*, *supra*, provided certainty. *Wilson* requires § 1983 courts to use the state limitations period applicable to personal injury torts, and *Owens* puts an even finer point on the rule by requiring use of the State's "general or residual statute for personal injury actions." *Wilson*, 471 U.S. at 276-280; *Owens*, 488 U.S. at 250. This bright-line rule, which may "be applied with ease and predictability," *Owens*, 488 U.S. at 243, mitigates the "human" cost of uncertainty that is felt by "all parties": "Plaintiffs may be denied their just remedy if they delay in filing their claims, having wrongly postulated that the courts would apply a longer statute. Defendants cannot calculate their contingent liabilities, not knowing with confidence when their delicts lie in repose." *Wilson*, 471 U.S. at 275 n.34. The rule, in short, advances "uniformity, certainty, and the minimization of unnecessary litigation." *Id.* at 275.

The same principles obtain with respect to the accrual date for § 1983 suits alleging Fourth Amendment violations. Both bench and bar would benefit from a rule that would allow "[p]otential § 1983 plaintiffs and defendants . . . [to] readily ascertain, with little risk of confusion or unpredictability, the applicable limitations period in advance of filing a § 1983 action." *Owens*, 488 U.S. at 245. Yet Wallace asks the Court to endorse an unpredictable, case-by-case approach to accrual—the furthest thing from the "firmly defined, easily applied rule[]" that should govern limitations inquiries. *Wilson*, 471 U.S. at 270 (internal quotations omitted). Under the fact-specific approach Wallace urges, plaintiffs run the risk that they

or their lawyers will wrongly predict the accrual date and file too late. The Seventh Circuit's bright-line rule puts counsel on notice that Fourth Amendment claims accrue with the challenged search or seizure.

For their part, States and municipalities have a strong interest in timely notice of alleged misconduct by their agents. If a plaintiff's claims are true, early notice allows for more effective discipline and other corrective measures. And if the allegations are unfounded, timely notice affords defendants the opportunity to gather and preserve evidence needed to defend against them. An uncertain, case-by-case rule would prompt some plaintiffs to wait, sometimes many years, before bringing their Fourth Amendment claims.

B. Wallace's Case-By-Case Approach Would Foster Wasteful Litigation.

As noted above, time-bar rules should avoid wasteful "byplay about limitations and allow[] the parties and the courts to concentrate their energies on the merits." *Herman*, 870 F.2d at 402. Wallace's proposed approach would have the opposite effect. It would require an often fact-intensive, preliminary round of litigation before a § 1983 court could decide whether a claim is even timely. The court may have to make this determination, moreover, many years after the challenged search or seizure, requiring defendants to marshal evidence that is stale (at best) and unavailable (at worst).

Covington v. City of New York, 171 F.3d 117 (2d Cir. 1999), illustrates the practical consequences of Wallace's approach. Following what Covington later claimed was an unlawful arrest, he was prosecuted for larceny and other crimes, before all charges were dismissed by operation of New York's speedy trial law. *Id.* at 120. Covington subsequently filed a § 1983 suit alleging false arrest and other constitutional violations. His false arrest claim was timely if it accrued when

his criminal charges were dismissed, but untimely if it accrued at the time of the challenged arrest. *Id.* at 119. The district court dismissed the claim on limitations grounds, finding that the earlier accrual date applied. *Id.* at 121. A divided panel of the Second Circuit reversed. Under the Circuit's case-by-case approach to Fourth Amendment claims, the panel held that accrual under *Heck* is an "inherently factual" issue that a court could not decide without "information . . . as to the nature of the evidence which might have been available against [plaintiff] in . . . [his criminal] proceedings." *Id.* at 123. Accordingly, the court of appeals concluded, the district court erred when it disposed of Covington's claim on summary judgment.

The proceedings that the Second Circuit ordered on remand would likely require protracted discovery and evidentiary findings by the district court. Moreover, such proceedings

> would place upon the district court an impossible and totally unrealistic burden. [They] would require that court to determine and assess the strength of all the evidence available to the state, to determine whether a motion to suppress evidence or statements based upon an alleged unlawful arrest or a claimed unreasonable search should be denied because any one or more of many exceptions would permit the evidence to be received, . . . or whether the state had evidence entirely independent of an arrest or search that would have been enough to obtain a conviction.

Id. at 128 (Glasser, J., dissenting). Even if there were a full trial before the criminal charges were dismissed, the § 1983 court would need to address a raft of questions—for example, whether the admission of evidence was harmless, or whether there would have been inevitable discovery, *Heck*, 512 U.S. at 487 n.7—of an "inherently factual" nature.

Under this scheme, § 1983 courts often would have to undertake this factual inquiry many years after the challenged search or seizure, and long after the statute of limitations on the claim has run. But just proving that the claim is untimely will require defendants to marshal evidence dating from the search or seizure, with all of the problems of stale and unavailable evidence that time bars are designed to avoid in the first place. See *Wilson*, 471 U.S. at 271 ("Just determinations of fact cannot be made when, because of the passage of time, the memories of witnesses have faded or evidence is lost.").

* * *

Before concluding, it is important to note that the *amici* States do *not* seek to encourage § 1983 courts to address the merits of Fourth Amendment claims before state criminal and post-conviction courts have had a full opportunity to do so. Rather, as *Heck* itself suggested, if a civil suit is filed before completion of state criminal proceedings, § 1983 courts should stay the action pending completion of the criminal proceedings, including any state post-conviction challenges to the plaintiff's conviction or sentence. See *Heck*, 512 U.S. at 487 n.8 ("[I]f a state criminal defendant brings a federal civil-rights lawsuit during the pendency of his criminal trial, appeal, or state habeas action, abstention may be an appropriate response to the parallel state-court proceedings.") (citing *Colorado River Water Conservation Dist. v. United States*, 420 U.S. 800 (1976)); see also *id.* at 488 n.9 (preclusion rules may "take account of the policy . . . that state courts be given the first opportunity to review constitutional claims bearing upon state prisoners' release from custody"); Pet. App. 13 ("Individuals and attorneys who wish to preserve a claim for false arrest or similar Fourth Amendment violations should file their civil rights action at the time of arrest. It will still be possible, of course, for a district court to stay any such action until the criminal proceedings are concluded, should it conclude in its discretion that a stay would

be useful."). A stay would eliminate any prospect that a § 1983 court will decide the constitutionality of a challenged search or seizure before the state courts have an opportunity to do so.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

LISA MADIGAN
Attorney General of Illinois
GARY FEINERMAN*
Solicitor General
MICHAEL SCODRO
Deputy Solicitor General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-3698

*Counsel of Record

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TROY KING
Attorney General of Alabama
11 South Union Street
Montgomery, AL 36130

CARL C. DANBERG
Attorney General of Delaware
Department of Justice
820 North French Street
Wilmington, DE 19801

ROBERT J. SPAGNOLETTI
Attorney General of the District of Columbia
One Judiciary Square
441 Fourth Street, N.W.
Washington, DC 20001

TOM MILLER
Attorney General of Iowa
1305 East Walnut
Des Moines, IA 50319

MIKE MCGRATH
Attorney General of Montana
Department of Justice
P.O. Box 201401
Helena, MT 59620-1401

WAYNE STENEHJEM
Attorney General of North Dakota
600 East Boulevard Avenue
Bismarck, ND 58505-0040

W.A. DREW EDMONDSON
Attorney General of Oklahoma
313 N.E. 21st Street
Oklahoma City, OK 73105-4894

HENRY MCMASTER
Attorney General of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

MARK L. SHURTLEFF
Attorney General of Utah
Utah State Capitol Complex
East Office Bldg., Suite 320
Salt Lake City, UT 84114-2320

ROB MCKENNA
Attorney General of Washington
1125 Washington Street SE
P.O. Box 40100
Olympia, WA 98504-0100

PEGGY A. LAUTENSCHLAGER
Attorney General of Wisconsin
State Capitol, Suite 114
Madison, WI 53707-7857